

Minnesota Sentencing Guidelines Commission

Proposed Modifications to the Sentencing Guidelines and Commentary Public Hearing Date: December 21, 2016

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Wednesday, December 21, 2016, at 2:00 p.m. in Room 1100, at the Minnesota Senate Building, 95 University Ave. W., Saint Paul, MN 55155. The public hearing is being held to consider proposed modifications to the Minnesota Sentencing Guidelines and Commentary resulting from legislative and non-legislative amendments.

A copy of the proposed modifications is available free of charge on the agency's website at mn.gov/sentencing-guidelines or by contacting the Minnesota Sentencing Guidelines Commission by mail at 309 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, or telephone at (651) 296-0144. Persons with hearing or speech disabilities may contact us via their preferred Telecommunications Relay Service. If you need special accommodations to attend, please contact the Minnesota Sentencing Guidelines Commission as soon as possible. This notice is available in alternative formats upon request.

All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the Commission's office at the above address or telephone number, or by e-mail at sentencing.guidelines@state.mn.us. If you need special accommodations to attend, please contact the Minnesota Sentencing Guidelines Commission as soon as possible. This notice is available in alternative formats upon request.

The Commission will hold the record open for five calendar days after the public hearing to accept written comment. Between December 27 and December 30, 2016, the Commission will meet in Saint Paul, MN, to formally adopt or reject the proposed modifications. The time and date of this meeting will be available at the public hearing and will be posted on the agency's web site. If adopted, modifications resulting from legislative amendments become effective August 1, 2017, or on a date ordered by the Commission. Modifications resulting from non-legislative amendments become effective August 1, 2017, unless the Legislature by law provides otherwise.

A. Prior Controlled Substance Offenses in Criminal History. The Commission proposes to modify the Minnesota Sentencing Guidelines by adding § 2.B.7.c, and to add Comment 2.B.704, as follows.

7. Determining Offense Levels for Prior Offenses.

- a. Classification of Prior Offense. The classification of a prior offense as a petty misdemeanor, misdemeanor, gross misdemeanor, or felony is determined by current Minnesota offense definitions (see Minn. Stat. § 609.02, subds. 2-4a) and sentencing policies. Offenses that are petty misdemeanors by statute, or that are certified as or deemed to be petty misdemeanors under Minn. R. Crim. P. 23, must not be used to compute the criminal history score.
- b. Monetary Threshold. When a monetary threshold determines the offense classification, the monetary threshold in effect when the prior offense was committed, not the current threshold, determines the offense classification in calculating the criminal history score.
- c. Drug Threshold. When an offender's criminal history contains a Minnesota felony conviction for controlled substance crime in the first, second, third, or fifth degree with an offense date prior to August 1, 2016, the current felony offense of the same name determines the offense classification in calculating the criminal history score, notwithstanding the redefinition of the offense, unless the court finds, by a preponderance of evidence, that the facts underlying the prior conviction would have constituted a controlled substance crime of a lesser degree, or a gross misdemeanor controlled substance crime, if the offense had been committed on or after August 1, 2016. If the court makes such a finding, then the controlled substance crime of the lesser degree, or the gross misdemeanor controlled substance crime, determines the offense classification in calculating the criminal history score.

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2.B.704. *On August 1, 2016, drug-quantity thresholds changed for various degrees of controlled substance crime, and a gross misdemeanor version of Fifth-Degree Controlled Substance Crime was created. Despite these elemental changes and the creation of the Drug Offender Grid, the essential severity of the various degrees of controlled substance crime remained unaltered by the Legislature and the Commission. The Commission decided that prior Minnesota felony drug offenses committed before August 1, 2016, should receive the same weight as offenses of the same degree committed on or after that date. On the other hand, the Commission decided that it was appropriate to permit a reduced weight when it could be proven that the facts underlying the prior offense comported with an offense that the Legislature now considered to be less serious. To illustrate, assume an offender was convicted in 2015 of Fifth-Degree Controlled*

Substance Crime for possessing a residual amount of methamphetamine weighing less than 0.25 grams, and that the offender had not been previously convicted of a chapter 152 offense (or similar crime from another jurisdiction). Because the prior offense was a felony Fifth-Degree Controlled Substance Crime, it will be eligible to contribute ½ felony point to the offender's criminal history score, unless it is proven by a preponderance of evidence that, under current offense definitions, the prior offense meets the definition of gross misdemeanor Fifth-Degree Controlled Substance Crime. In the latter case, the prior offense will be eligible to contribute one gross misdemeanor unit to the offender's criminal history score.

- B. Re-Ranking Severity Level of Child Neglect and Endangerment.** The Commission proposes to re-rank child neglect and endangerment under Minn. Stat. § 609.378, at Severity Level 5, by modifying Minnesota Sentencing Guidelines, § 5.A and 5.B, as follows.

5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
<u>5</u>	<u>Child Neglect/Endangerment</u>	<u>609.378</u>
1	Child Neglect/Endangerment	609.378

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5.B. Severity Level by Statutory Citation

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Statute Number	Offense Title	Severity Level
609.378	Child Neglect/Endangerment	<u>5</u> 1

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- C. Modifying the Permissive Consecutive Sentencing List.** The Commission proposes to add interference with a body or scene of death under Minn. Stat. § 609.502, subd. 1(1),

to the list of offenses eligible for permissive consecutive sentencing in the Minnesota Sentencing Guidelines, § 6, as follows.

6. Offenses Eligible for Permissive Consecutive Sentences

- A.** Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.
- B.** Under section 2.F.2(a)(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

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Statute Number	Offense Title
609.502, subd. 1(1)	<u>Interference with a Dead Body or Scene of Death</u>

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